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EXAMINER

MULLIS, JEFFREY C

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1796

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 1796

Applicants simultaneously argue that no 1.17(p) fee was due since applicants were not aware that an Office action had issued and since the references were known for less than three months. Firstly, any IDS filed after the issuance of an Office action on the merits must be filed with the statement that the references were not known to applicants. No such statement was filed with the IDS of 7-7-08. Secondly applicants statement is inaccurate as US 2003/0134963 is applicants own work and applicants were therefore aware of it as of the publication date (and also aware of the first citation if Miyoshi is indeed the author of the first citation also). Thirdly, the first US reference which appears to be 2003/0118757 is not properly cited with the author (or at the least the patent publication number is illegible) as required by 37 CFR 1.98 who is not Miyoshi. There is no exception in MPEP 609 to these requirements because an applicant was unaware that an Office action had issued. 37 CFR 1.97 requires that an IDS be in conformance with 37 CFR 1.98 and hence applicants IDS would not have been in compliance with 37 CFR 1.98 and 1.97 even if a fee were unambiguously authorized in the paper of 7-7-08. Applicants arguments regarding Takagi pertain only to claim 2. While it is true that Takagis' polyester component does not largely reside in the discontinuous phase, throughout the Takagi document Takagi refers to their components being "mostly" or "mainly" being in one phase or the other (see for instance paragraphs 47, 49 and 50) thus implying that at least a portion of polyester (although not a major amount) is in the discontinuous phase. Claim 2 at present only recites that "component (C) forms a discontinuous phase" and is not limited to compositions in which component "C" resides mainly in the discontinuous phase. It is not the position of

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the examiner that any actual examples according to the claimed invention exist in

Takagi nor is it the position of the examiner that Takagi anticipate the claims.

JCM

7-22-09

/Jeffrey C. Mullis/

Primary Examiner, Art Unit 1796